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**OFFICE OF PETITIONS**

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BOSTON MA 02210-2600

In re Application of :  
O'Hara, et al. : PATENT TERM ADJUSTMENT  
Application No. 10/076,934 :  
Filed: February 15, 2002 :  
Atty Docket No. WYS-00701 :

This decision is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," filed October 16, 2008. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from 137 days to 594 days.

The Determination of Patent Term Adjustment under 35 U.S.C. 154(b) was mailed July 16, 2008. The instant application for patent term adjustment and issue fee payment were timely filed October 16, 2008. Prior to a decision on the application for patent term adjustment being rendered, on December 3, 2008, applicants filed a petition to withdraw from issue along with a request for continued examination (RCE). The application was withdrawn from issue December 4, 2008.

Nevertheless, applicants request correction of the adjustment on the basis that the Office will take in excess of three years to issue this patent and also in light of the recent court decision in *Wyeth v. Dudas*, No. 07-1492 (D.D.C. September 30, 2008).

A decision in this regard is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term for Office failure to issue the patent within three years. See, 37 CFR 1.703(b).

Applicants are given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within three years. A copy of this decision should accompany the request. Applicants may seek such consideration without payment

of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of 37 CFR 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

Technology Center AU 1644 has been advised of this decision. The application is, thereby, forwarded to the Technology Center 1644 for consideration of the RCE by the examiner.

Telephone inquiries specific to this decision should be directed to Alesia M. Brown, Petitions Attorney, at (571) 272-3205.



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